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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MIGUEL OMAR OJEDA-ENRIQUEZ,

Petitioner,

v.

WARDEN, et al.,

Respondents.

Case No. 2:18-cv-01207-RFB-VCF

ORDER

The court notes at the outset that no courtesy copies—except as specified at the conclusion of this order—are required in this case at this time.

Before the court is petitioner Miguel Omar Ojeda-Enriquez’s motion for leave to file a second-amended § 2254 petition for a writ of habeas corpus. On December 11, 2018, the Federal Public Defender filed a first-amended petition on behalf of petitioner (ECF No. 12). Contemporaneously, counsel filed a motion for leave to file a second-amended petition on behalf of petitioner (ECF No. 11). Ojeda-Enriquez explains that the first-amended petition was filed without the FPD having a full opportunity to examine all potential claims in anticipation of the imminent expiration of the statute of limitations. Good cause appearing, the motion is granted. Petitioner at all times remains responsible for properly exhausting his claims and for calculating the running of the federal limitation period as applied to his case.

1 **IT IS THEREFORE ORDERED** that petitioner's motion for leave to file a second-
2 amended petition (ECF No. 14) is **GRANTED**. Petitioner shall file and serve his
3 second-amended petition within **45 days** of the date of this order.

4 **IT IS FURTHER ORDERED** that respondents shall have **45 days** after service of
5 an amended petition within which to answer, or otherwise respond to, the amended
6 petition. If petitioner does not file an amended petition, respondents shall have 45 days
7 from the date on which the amended petition is due within which to answer, or otherwise
8 respond to, petitioner's original petition. Any response filed shall comply with the
9 remaining provisions below, which are entered pursuant to Habeas Rule 5.

10 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
11 in this case shall be raised together in a single consolidated motion to dismiss. In other
12 words, the court does not wish to address any procedural defenses raised herein either
13 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
14 answer. Procedural defenses omitted from such motion to dismiss will be subject to
15 potential waiver. Respondents shall not file a response in this case that consolidates
16 their procedural defenses, if any, with their response on the merits, except pursuant to
17 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
18 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
19 do so within the single motion to dismiss not in the answer; and (b) they shall
20 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
21 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
22 procedural defenses, including exhaustion, shall be included with the merits in an
23 answer. All procedural defenses, including exhaustion, instead must be raised by
24 motion to dismiss.
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1 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
2 shall specifically cite to and address the applicable state court written decision and state
3 court record materials, if any, regarding each claim within the response as to that claim.

4 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of
5 the answer, motion to dismiss, or other response to file a reply or opposition, with any
6 other requests for relief by respondents by motion otherwise being subject to the normal
7 briefing schedule under the local rules.

8 **IT IS FURTHER ORDERED** that any state court record exhibits filed by the
9 parties herein shall be filed with an index of exhibits identifying the exhibits by number
10 or letter. The CM/ECF attachments that are filed shall further be identified by the
11 number or letter of the exhibit in the attachment.

12 **IT IS FURTHER ORDERED** that, at this time, the parties shall send courtesy
13 copies of **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY**
14 to the Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court,
15 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on
16 the outside of the mailing address label. **No further courtesy copies are required**
17 **unless and until requested by the court.**

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22 DATED: June 26, 2019.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE